

Open Adversary Case

U.S. Bankruptcy Court

Southern District of Indiana

Notice of Electronic Filing

The following transaction was received from Hazlett, Justin entered on 11/22/2006 at 4:06 PM EDT and filed on 11/22/2006

Case Name: State of Indiana - Steve Carter, Atty v. Campbell

Case Number: 06-50656

Document Number: 

Docket Text:

Complaint with Adversary Proceeding Cover Sheet filed by Plaintiff(s) State of Indiana - Steve Carter, Atty against Defendant(s) Robert Colin Campbell [62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)], [65 (Dischargeability - other)], [02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))] (Attachments: (1) Exhibit A (2) Adversary Cover Sheet) (Hazlett, Justin)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\Documents and Settings\jhazlett\Desktop\CMECF Ready to Send\350232_1.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1072195184 [Date=11/22/2006] [FileNumber=6420249-0] [8b29ea852e34004ca61780614fc4aac835d764ace8de202e923676e1f1653a403512ee2e7b0b5b24c297f15618be189ee1d5177d5a6e44589f9cfbcb055abe53]]

Document description:Exhibit A

Original filename:C:\Documents and Settings\jhazlett\Desktop\CMECF Ready to Send\350932_1.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1072195184 [Date=11/22/2006] [FileNumber=6420249-1] [623de387a0e302e0abd50f8c6c93e9b024fb0f5c72bf04df7f6d56a7c70adccbbc f563b7f645aa48801304c5184348baf6cec566b21127c855f6aface0610eab]]

Document description:Adversary Cover Sheet

Original filename:C:\Documents and Settings\jhazlett\Desktop\CMECF Ready to Send\351023_1.pdf

Electronic document Stamp:

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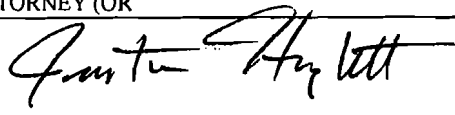
06-50656 Notice will be electronically mailed to:

Justin G. Hazlett jhazlett@atg.state.in.us

06-50656 Notice will not be electronically mailed to:

Robert Colin Campbell
5102 Hummingbird Circle

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS State of Indiana	DEFENDANTS Robert Colin Campbell	
ATTORNEYS (Firm Name, Address, and Telephone No.) Justin G. Hazlett, Office of the Indiana Attorney General 302 West Washington St., IGCS 5th Floor Indianapolis, IN 46204; Tel. (317) 232-0167		ATTORNEYS (If Known) David R. Krebs, Hostetler & Kowalik P.C. 101 W. Ohio St., Suite 2100 Indianapolis, IN 46204; Tel. (317) 262-1010
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Complaint to determine dischargeability of particular debts under 11 USC 523(a)(2)(A) and 523(a)(7) and for adjudication of claims involving injunctive and other relief under Indiana Deceptive Consumer Sales Act, Ind. Code 24-5-0.5-1 through -12.		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) - Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) - Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) - Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) - Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) - Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) - Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input checked="" type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)		FRBP 7001(6) - Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input checked="" type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) - Injunctive Relief <input type="checkbox"/> 71-Injunctive relief - reinstatement of stay <input type="checkbox"/> 72-Injunctive relief - other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case - 15 U.S.C. §§78aaa et seq. <input checked="" type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ 349,000 (Estimated)	
Other Relief Sought Injunctive relief.		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Robert Colin Campbell		BANKRUPTCY CASE NO. 05-31503
DISTRICT IN WHICH CASE IS PENDING Indiana Southern	DIVISIONAL OFFICE Indianapolis	NAME OF JUDGE Anthony J. Metz, III
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE 11/22/2006	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Justin G. Hazlett	

Print Form

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF) captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In Re:)	
)	
Robert Colin Campbell,)	CASE NO. 05-31503-AJM-7
)	CHAPTER 7
Debtor)	
_____)	
STATE OF INDIANA,)	
)	
Plaintiff,)	
)	
v.)	Adv. Proc. No. _____
)	
ROBERT COLIN CAMPBELL,)	
)	
Defendant.)	

COMPLAINT TO DETERMINE DISCHARGEABILITY

Plaintiff, State of Indiana, by Steve Carter, Attorney General of Indiana, and Justin G. Hazlett, Deputy Attorney General, files its Complaint to determine the dischargeability of particular debts owed by Defendant, Robert Colin Campbell, under 11 U.S.C. §523(c)(1) and Federal Rule of Bankruptcy Procedure 4007.

Jurisdiction

1. Count I of this adversary proceeding is a core proceeding under 28 U.S.C. §157(b)(2)(I), relating to the bankruptcy case currently pending under the caption of In Re: Robert Colin Campbell, Debtor, case number 05-31503, filed under Chapter 7 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division. The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §157(a) and S.D.Ind.L.R. 83.8.

2. Count II of this adversary proceeding is a non-core proceeding over which this Court has jurisdiction pursuant to 28 U.S.C. §1334 in that these proceedings are related to the above-captioned bankruptcy proceeding. As a result, this Court has authority to hear and determine the dispute at issue and grant the relief requested, and Plaintiff consents to the entry of a final order in this proceeding by the bankruptcy judge.

Parties

3. Plaintiff brings this action as a creditor of Defendant arising from Defendant's activities in Indiana that Plaintiff alleges violate Indiana's Deceptive Consumer Sales Act, Indiana Code Ch. 24-5-0.5, and as a representative of the interests of the citizens of Indiana and consumers aggrieved by Defendant's activities related to his retail window sales and installation business, Windows America, Inc.

4. Defendant is an individual debtor seeking discharge of the debts upon which Plaintiff claims he is liable to the State of Indiana. Defendant resides at 5102 Hummingbird Circle, Carmel, Indiana.

Facts

5. At all times relevant to the allegations of this Complaint, Defendant was the sole owner and controlling officer of Windows America, Inc., a company engaged in home remodeling sales and services, including the retail sale and installation of windows it purchased from window manufacturers or wholesalers. Defendant controlled the corporation, directed its activities, and personally conducted many of its operations, including those described in this Complaint. Defendant used the corporation to deceive and defraud consumers. Defendant also directly engaged in at least some of the activities described in this Complaint.

6. During the period beginning on or about January 2005 through July 2005, Windows America, Inc. contracted with Indiana consumers to provide various home improvement products and services, including windows and window installations. Defendant made the representations and acted as described in this Complaint to at least the consumers identified in the attached Exhibit A, each of whom contracted with Defendant's company, Windows America, Inc., and each of whom made deposit or full contract price payments to Windows America, Inc. in justifiable reliance on Defendant's representations.

7. The contracts described in numbered paragraph 6 each contained an explicit or implicit representation that Windows America, Inc. would order supplies necessary to perform the contracts. Despite this, neither Windows America, Inc. nor Defendant ordered supplies necessary to perform the contracts, including windows, for some or all of the consumers with whom Windows America, Inc. contracted.

8. The contracts described in numbered paragraph 6 each contained an explicit or implicit representation that Windows America, Inc. would complete performance under the contracts within a specified period of time or within a reasonable time. Despite this, Windows America, Inc., failed to complete the contracts.

9. As the controlling officer exercising control over, among other things, Windows America, Inc.'s relationships with suppliers, Defendant knew that Windows America, Inc.'s suppliers had ceased, or soon would cease, accepting orders from Windows America, Inc. and that these actions would severely adversely affect Windows America, Inc.'s ability to complete its contracts. Defendant knew these things at the time Windows America, Inc. entered into contracts with consumers during the period January through July 2005, or acted with such

reckless disregard of Windows America, Inc.'s supplier relationships as to be charged with such knowledge.

10. At the time Windows America, Inc. contracted with consumers during the period January through July 2005, the company was experiencing significant financial problems, including the following:

a. Windows America, Inc. repeatedly attempted to make supplier payments with checks that failed to clear due to insufficient funds in the Windows America, Inc. account on which the checks were drawn.

b. In March 2005, Windows America, Inc.'s payroll processor ceased its business relationship with Windows America, Inc. due to Windows America, Inc.'s inability to make timely payments for its payroll.

c. In or about April or May 2005, two of Windows America, Inc.'s primary window suppliers ceased accepting orders from Windows America, Inc. due to outstanding balances owed to them by Windows America, Inc. Prior to these dates, Windows America, Inc. had made check payments to these suppliers, which failed to clear due to insufficient funds in the Windows America, Inc. account on which the checks were drawn.

11. Windows America, Inc.'s financial problems, which within six months resulted in its total failure and bankruptcy filing soon thereafter, severely adversely affected the company's ability to deliver product and perform services as required by its contracts with consumers. As a result, the company failed to perform the contracts it entered into with consumers during the period January through July 2005.

12. As the controlling officer exercising control over, among other things, Windows America, Inc.'s finances, Defendant knew that Windows America, Inc.'s financial problems would prevent it from completing its contracts with consumers at the time Windows America, Inc. entered into these contracts, or acted with such reckless disregard of Windows America, Inc.'s financial problems as to be charged with such knowledge.

13. At the time Windows America, Inc. contracted with consumers during the period January through July 2005, the company was not licensed to perform the services for which it had contracted in Marion County, and could not legally engage in the contracts it had entered with Marion County consumers.

14. As the controlling officer exercising control over Windows America, Inc.'s daily operations, Defendant either knew that Windows America, Inc.'s failure to maintain its licensing status within Marion County precluded it from legally engaging in the contracts it had entered with Marion County consumers, or acted with such reckless disregard of this fact as to be charged with such knowledge.

15. During the period January through July 2005, Defendant acted to hide and to further his fraudulent activity by misrepresenting to consumers with whom Windows America, Inc. had contracted that Windows America, Inc.'s failure to perform was due to supplier delays, job scheduling problems, or other reasons that were not true.

16. Defendant acted as described in this Complaint with the intent and purpose of deceiving consumers into believing that Windows America, Inc. would perform its contracts with them.

Counts

Count I – Determination of Dischargeability of Debt

17. Plaintiff realleges and incorporates by reference the allegations set forth in numbered paragraphs 1 through 16.

18. Through the misrepresentations and actions described in this Complaint, Defendant obtained and retained money from the consumers identified in Exhibit A through false representations, false pretenses, or actual fraud.

19. Defendant's debts to the consumers identified in Exhibit A, as well as to the State of Indiana for the violations identified in numbered paragraphs 23 through 25 below, are nondischargeable pursuant to 11 U.S.C. §523(a)(2)(A) and §523(a)(7).

Count II – Violations of the Indiana Deceptive Consumer Sales Act

20. Plaintiff realleges and incorporates by reference the allegations set forth in numbered paragraphs 1 through 16.

21. The transactions referred to in numbered paragraph 6 are "consumer transactions," as defined by Indiana Code §24-5-0.5-2(a)(1).

22. Defendant is a "supplier" as defined by Ind. Code §24-5-0.5-2(a)(3).

23. Through the representations and actions described in this Complaint, Defendant represented that Windows America, Inc. was able to complete the subject of the consumer transactions referred to in numbered paragraph 6 within the time period stated within the contracts, or within a reasonable period of time, when Defendant knew or reasonably should have known Windows America, Inc. could not. Defendant has violated Ind. Code §24-5-0.5-3(a)(10).

24. Defendant committed the violations referred to in numbered paragraph 23 with knowledge.

25. Defendant committed the violations referred to in numbered paragraph 23 as part of a scheme, artifice, or device, with intent to defraud or mislead. Defendant committed multiple incurable deceptive acts, as defined by Ind. Code §24-5-0.5-2(a)(8).

Relief Sought

26. Plaintiff requests that the Court enter judgment ordering that Defendant's debts owed to the consumers identified in Exhibit A and to the State of Indiana are nondischargeable and excepted from any discharge Defendant might otherwise receive in the bankruptcy case related to this action.

27. Plaintiff requests that the Court enter judgment ordering that:

a. Defendant is permanently enjoined, under Ind. Code §24-5-0.5-4(c)(1), from violating Ind. Code §24-5-0.5-3(a)(10) or any other provision of Indiana's Deceptive Consumer Sales Act, Ind. Code §§24-5-0.5-1 through -12.

b. Defendant shall return money unlawfully received from aggrieved consumers and pay restitution to these consumers, pursuant to Ind. Code §24-5-0.5-4(c)(2) and §24-5-0.5-4(d), in an amount to be determined at trial.

c. Defendant shall pay to the Office of the Indiana Attorney General, pursuant to Ind. Code §24-5-0.5-4(c)(3), costs of its investigation and prosecution of this action.

d. All contracts between the consumers identified in Exhibit A and Windows America, Inc. or Defendant are canceled and voided, pursuant to Ind. Code §24-5-0.5-4(d).

e. Defendant shall pay to the State of Indiana, pursuant to Ind. Code §24-5-0.5-4(g), civil penalties in the amount of \$5,000 for each of Defendant's knowing violations of the Indiana Deceptive Consumer Sales Act, Ind. Code §§24-5-0.5-1 through -12.

f. Defendant shall pay to the State of Indiana, pursuant to Ind. Code §24-5-0.5-8, civil penalties in the amount of \$500 for each of Defendant's incurable deceptive acts.

28. Defendant requests all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Attorney General of Indiana

by: /s/ Justin G. Hazlett
Justin G. Hazlett
Deputy Attorney General
Attorney No. 22046-49

Office of the Indiana Attorney General
302 West Washington Street
IGCS 5th Floor
Indianapolis, IN 46204
(317) 232-0167
jhazlett@atg.state.in.us

Consumer Name	Address	Contract Date
Martin Atwell	3155 National Road North Columbus, IN 47201	12/31/2004
Jean Bang	706 E. 71st St. Indianapolis, IN 46220	06/30/2005
Doug Brower	55 Village Circle Zionsville, IN 46077	05/20/2005
William K. Bryson	780 N. Marion St. Martinsville, IN 46151	06/07/2005
Deborah Burks	4632 Aerie Lane Indianapolis, IN 46254	04/25/2005
Michelle Chappelow	5763 E. Dayhuff Mooresville, IN 46158	04/2005
Nicole N. Chisley	6436 North Oakview Drive Indianapolis, IN 46278	05/28/2005
Cathy S. Coon	8279 S CR 700 E Selma, IN 47383	03/07/2005
Alberta Dearing	675 Monte Vista Drive Greenwood, IN 46143	04/04/2005
Steve Elliott	5133 N. New Jersey Street Indianapolis, IN	06/2005
Mark & Charisa Flight	6115 Pillory Drive Indianapolis, IN 46254	06/20/2005
Janet K. Guest	7601 Blain Way Indianapolis, IN 46254	04/27/2005
Richard D. Halfast	200 Wyndotte Drive Carmel, IN 46032	10/21/2004
Claudia Hernandez	3439 W. 53rd Street Indianapolis, IN 46228	02/2005
Lesa (Lisa) Michelle Himes	12109 Briarway Dr. Indianapolis, IN 46259	06/28/2005
Carla R. Hounshel	6723 Kingman Dr. Indianapolis, IN 46256	02/19/2005
Terry E. Jones	4125 Sunshine Ave. Indianapolis, IN 46228	06/30/2005
Willie Jones	4126 N. Graham Avenue Indianapolis, IN 46226	06/01/2005
Michael J. Kelly	5727 Central Avenue Indianapolis, IN 46220	04/15/2005
David & Gloria Mickley	1341 Secretariat Lane Indianapolis, IN 46217	05/19/2005
Opal Lynn Napoli	404 S. Ohio St. Sheridan, IN 46069	06/26/2005
Eric Nolan	1123 Ivy lane Indianapolis, IN 46220	06/14/2005

Consumer Name	Address	Contract Date
Rae Pearson	7639 Geist Valley Ct. Indianapolis, IN 46236	03/15/2005
Kimberli Pfeifer	11649 Solomons Court Fishers, IN 46037	04/28/2005
James M. Phillips	2632 Cold Spring Lane Indianapolis, IN 46222	06/16/2005
Frank Prater	19508 Amber Way Noblesville, IN 46060	06/11/2005
James L. Ray	8480 W. Crum Road Bloomington, IN 47403	05/31/2005
Rosalind Roeder	8503 Five Points Road Acton, IN 46259	02/18/2005
Gary Ross	4865 Willow Ridge Ct. Zionsville, IN 46077	05/11/2005
Karen S. Seltzer	1654 Catalina Way Zionsville, IN 46077	12/21/2004
Tamara Smith	55 N. 4th Street Zionsville, IN 46077	06/15/2005
Glenda Soriano	719 Northview Ave. Indianapolis, IN 46220	04/07/2005
Joyce and Jay Stewart	454 Saddle Hill Ct Indianapolis, IN 46234	06/2005
Joe Taff	14238 Skipper Court Carmel, IN 46033	03/01/2005
Eileen A. Teska	7743 Beckenbauer Place Indianapolis, IN 46214	06/22/2005
Diane Teske	13471 Kingsbury Drlve Carmel, IN 46032	10/2004
Thomas V. Vester	7342 Runningbrook Way Indianapolis, IN 46254	04/21/2005
Carl Weiler	8910 Ellington Drive Indianapolis, IN 46234	04/22/2005